

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60430

FILE: B-184351

DATE: January 27, 1976

MATTER OF: Philadelphia Scientific Controls Inc.

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99192

DIGEST:

Government may not be deprived of its right to prompt payment discount under contract where delay in making payment is occasioned by contractor. Therefore, Government is entitled to retain discount amount where failure to make payments to contractor within discount period solely was attributable to contractor's bankruptcy proceedings and payment was made promptly upon its receipt of notice of appointment of receiver for bankrupt contractor.

Philadelphia Scientific Controls Inc. (PSC) has requested reimbursement of prompt payment discounts totaling \$200.29, taken by the Defense Supply Agency in payment of invoices under 13 contracts. Payment was withheld since the Government had received notice of the bankruptcy proceedings on PSC on November 11, 1974, which was prior to any of the billings involved in this case. Treasury checks were issued in payment on January 7, 1975, after the Government had received notice of the Order Appointing a Receiver on January 3, 1975.

The main contention presented by PSC is that the prompt payment discounts taken by the Government are inappropriate in that the period for prompt payment as provided in each contract had expired by the time of payment on January 7, 1975. PSC bases this argument on grounds that the time from either the date of the acceptance of the shipment or the date of the invoice (whichever was later in point of time), to the date of the issuance of the Government checks, in each case, was in excess of the discount period provided by the applicable contract.

The agency does not dispute the dates in question; rather it contends that the dates used by PSC to commence the running of the period were not appropriate in the instant case. This contention is based on the fact that the Government was notified of the bankruptcy of PSC on November 11, 1974, and that it promptly paid the billings upon receipt of the notice of the court's Order Appointing a Receiver on January 3, 1975.

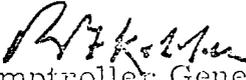
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Under 11 U.S.C. 110(d)(2) and (3) (1970) a person indebted to a bankrupt may not pay the indebtedness to the bankrupt if the debtor has actual knowledge of the pending bankruptcy except in circumstances not applicable here. In the instant case the agency received actual knowledge of the pending bankruptcy on November 11, 1974, and payments to the bankrupt would not have been proper under the above-cited provision of the Bankruptcy Act.

Furthermore, we have approved the taking of the discount if the delay in payment is due to the contractor's pending bankruptcy proceedings. In our decision B-89146, January 23, 1950, we stated that:

"* * * the record shows that the claim for payment was forwarded to this Office for settlement because of the bankruptcy proceedings against the contractor. It is obvious therefore that the failure to make payment within the discount period was solely attributable to the contractor and, under such circumstances discount is proper for deduction since the Government may not be deprived of its right to discount where the delay in making payment is occasioned by the contractor. Hence, since the amount deducted as discount is in accordance with the contract terms there is no legal basis for refunding any part of that amount."

Accordingly, PSC's claim for reimbursement of the discount taken is denied.


Deputy Comptroller General
of the United States